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## Chapter 2: Roles and Responsibilities for Decision-Making

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### Introduction

Making decisions on leases, easements, rights-of-way, rights-of-entry, and other types of use authorization is a key element of properly managing state-owned aquatic lands. These decisions are among the department's most powerful tools for ensuring good stewardship of these lands.

Through these decisions, the department may change the character of uses in an embayment, lake or river to achieve its statutory goals and responsibilities – or, if done poorly, to reduce the public benefits of these aquatic lands. By requiring change to a proposal or conditions in a lease or easement document, the department can fine-tune a use to make it fit more closely with these goals. Each decision on a proposed use has the potential to set a precedent across the state in the management of state-owned aquatic lands.

Therefore, it is important to think strategically and long-term, gather all the necessary information, consider all possible ramifications, exercise careful judgement for decisions on all use authorization applications, and fully document these decisions.

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## Serving the Public

The public the department serves includes all present and future citizens of Washington state. The department is responsible for managing state-owned aquatic lands for the benefit of the public as a whole, collectively, not one person at a time. In general, department staff should seek to work cooperatively with all project proponents, concerned citizens, government agencies, tribes and interested organizations alike to develop environmentally sound uses of state-owned aquatic lands, increase public access, support aquatic resource protection and enhancement projects, and cooperatively prepare shared plans and goals, consistent with the department's statutory obligations.

Each member of the public has the right to use state-owned aquatic lands, as long as they do not damage or alter the land or exclude others from using it. If a person wishes to occupy the land, extract resources from the land, alter the land in any way, have fully or partially exclusive use of state-owned aquatic lands, or interfere with the use of the land by the general public, they must apply for and be granted authorization from the department. That person then has the responsibility to protect the land, use it only in the approved manner, and compensate the public for that exclusive use.

As a public agency, the department has a unique land manager responsibility that carries to the public generally, as well as to individual members of the public. In that role, all department staff are expected to provide good customer service to every member of the public. Good customer service means reviewing an application promptly, responding to questions helpfully, making useful suggestions when possible, and giving a clear, timely, and defensible answer to an application. Good customer service does not necessarily require approving an application, but it does require making decisions in the best interest of the public as a whole. Good customer service includes providing answers to applicants in an honest as well as diplomatic and tactful manner.

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## Evaluation of a Proposal

In general, to evaluate a proposed use authorization, the following questions must be answered, based on the department's statutory responsibilities and goals:

### **What is the current condition of the state-owned aquatic lands in question?**

It is essential to know the current baseline conditions of the aquatic lands in question, and of all neighboring or potentially affected aquatic lands. This includes habitat and natural conditions, uses currently occurring on the land or planned for the future, the specific laws and regulations which relate to that parcel of land, and any financial, legal, and environmental liabilities which currently exist or may exist. If the aquatic lands have been degraded from their original condition, it is valuable to identify their potential for restoration. Also, identify the values the state-owned aquatic lands provide, or could potentially provide, for public access, environmental protection, water-dependent use, renewable resource use, navigation and other benefits.

### **What are the department's short and long-term goals for these lands?**

Before analyzing a proposal, review the department's goals for the proposed site and surrounding lands. These goals are established through statute and policy and in department plans for the parcel, bay or surrounding watershed. Staff should refer to specific aquatic land use plans whenever they exist. However, even in the absence of such plans, it is important to think carefully about the specific site, the unique or common characteristics of that site, and its relationship to the larger landscape.

This review should be conducted separate and apart from analyzing the proposal itself. The department's fundamental obligation is not merely to weigh the applicant's proposal, but to consider the best possible uses for the lands. Highest attention

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should be paid to ensuring environmental protection, promoting public access, fostering water-dependent uses, and the other public benefits described in statute.

### **What is the nature of the proposal, in all respects?**

To fully understand and have a complete picture of a proposal, and to circumvent last-minute "surprises" or glitches, try to answer the following questions:

- What is the value of the proposal to individuals or entities other than the general public? Who realizes that value and how?
- Does the proposed activity need to use or cross state-owned aquatic lands? If relocation or re-routing is feasible, would that improve the future management of state-owned lands? Would the project best be relocated upland?
- Is this a new proposal, an existing structure or use, or an expansion of a structure or use? If the project already exists, is it a trespass or has it previously been authorized? Would the department approve the project if it was newly proposed under current policies? Could it be modified or re-located now to conform to current conditions and policies? What is the realistic chance for removal of the facility?
- Has the applicant provided all necessary information for the department's evaluation of the project? How significant are remaining uncertainties in terms of environmental risk, financial risk or other concerns?
- What other governmental action is needed for this project, such as regulatory and land use permits? Does it need authorization from other landowners?
- How unique or precedent-setting is the proposed project? Does it raise unresolved policy issues? Is it politically controversial? Does it cross many jurisdictions?

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- What comparable examples of this kind of proposal might be found elsewhere on state-owned aquatic lands, state-owned uplands, with other agencies, other states, or other landowners? What can the department learn from these examples?

### **How would the proposal affect aquatic lands?**

For each proposal, the department should consider each of the public benefits of aquatic lands, individually as well as together. Significant questions include:

- Does the proposal encourage direct public use and access to state-owned aquatic lands, or discourage it?
- Does the proposal foster water-dependent uses, or inhibit them?
- Does the proposal ensure environmental protection, or does it endanger the environment? At a minimum, the department must specifically consider the land's natural values with regard to existing or potential wildlife habitat, existing or potential natural area preserves, the representativeness and relationship of this land within the ecosystem, and existing or potential spawning areas.
- Does the proposal utilize renewable resources, or reduce or prevent their utilization?
- Does the proposal generate revenue in a manner consistent with the other benefits, does it reduce revenue, or does it conflict with the other benefits?
- How, or in what manner, does the proposal provide the benefits outlined above?
- How much, or to what degree, does the proposal provide these benefits?

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- How does the proposal affect navigation and commerce, especially in a harbor area?
  - How might the value of the state-owned aquatic lands in question, as well as the surrounding lands, be damaged or enhanced by the project?
  - How will the uses currently occurring on or near the land, or uses which are planned for the future, affect or be affected by the project?
  - How will current or potential liabilities associated with the land be affected by the project?

### **Would the proposal advance or hinder the goals for these lands?**

Once the effects of a proposal are known, staff must determine whether it appears to advance or hinder these public benefits and the department's goals and also whether it is the best potential use to do so. This is a key responsibility of department aquatic land managers.

Also, staff should not merely accept the proposal as offered, but creatively work to prepare the best possible proposal. Staff should ask how the proposal can be altered to best meet the department's goals.

In general, the duty of aquatic staff is to apply their best judgement to make an initial decision on how the proposal might advance or hinder the department's goals, and then offer a thoughtful recommendation to the final decision-maker. (To determine the final decision-maker, see the discussion on Delegation of Authority below.)

### **If the proposal is to be approved, what conditions or considerations should go into the final use authorization document?**

Staff should seriously consider imposing conditions on the design, operation or other elements of the structure or activity within a use authorization to best meet the department's goals.

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In fact, the department must impose whatever conditions are necessary to ensure environmental protection, provide for other public benefits of state-owned aquatic lands, and otherwise meet the department's statutory obligations.

It is particularly important to ensure that future options are maintained and future needs are considered. While other government agencies have a variety of regulatory requirements, no other agency has the same comprehensive proprietary mandates for environmental protection or public access on state-owned aquatic lands, so the department must take the lead on these issues. Also, under the Endangered Species Act, the department and the state can be liable for damage to habitat on state-owned aquatic lands. Staff may help to avoid serious or irrevokable environmental impacts or natural resource commitments.

Finally, before a use authorization is granted, the department should seek to meet all the following criteria:

- The data is sufficient to make an informed decision.
- All adverse environmental and other impacts, including cumulative impacts, have been considered and avoided, minimized or otherwise mitigated.
- Any restrictions to navigation and commerce have been considered and avoided, minimized, or otherwise mitigated.
- The project does not unreasonably restrict the department's future proprietary options.
- The project is consistent with any applicable department statutes, regulations, policies, and land use or "aquascape" plans.
- The project includes appropriate monitoring and adaptive management measures in case of unforeseen concerns.

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- The project is consistent with applicable federal, state, or local plans.
  - The project is consistent with all state, federal or local laws and permit requirements, and has received or will shortly receive all necessary permits.

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## Delegation of Authority

The Commissioner of Public Lands has delegated substantial authority for signing aquatic leases and other documents to various department managers. This authority is to be used within the limits of the statutes, regulations, and policies of the department. The delegation of authority does not negate any requirements to fully inform or involve Executive Management and/or the Aquatic Resources Division in advance about individual proposals or actions. (See discussion on the involvement of Executive Management in decision-making.)

The Commissioner of Public Lands has retained all signatory authority regarding:

- Aquatic Lands Enhancement Account grants
- Tide, shore and bedland leases, easements, and use and occupancy agreements over 12 years
- Utility rights-of-way
- Vacations of waterways
- Oil and gas leases
- Commissioner's orders (for example, designation of aquatic reserves)

The Commissioner has delegated to the Supervisor signatory authority regarding:

- Harbor Area leases
- Interagency agreements costing more than \$10,000
- Land exchange agreements
- Mining contracts

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The Commissioner and Supervisor have delegated to the Aquatic Resources Division Manager signatory authority regarding:

- Appraisals and sales of valuable materials, including geoducks, on aquatic lands
- Interagency agreements, not specific to a Region, costing \$10,000 or less

The Commissioner and Supervisor have delegated to the Region Managers signatory authority within their Region regarding:

- Tide, shore and bedland leases, easements, and use and occupancy agreements for 12 or fewer years
- Waterway permits
- Lease assignments, including consents to assignments for security or other purposes
- Interagency agreements specific to a Region costing \$10,000 or less

Authority for signing aquatic leases for 12 or fewer years and waterway permits has been delegated to both the Aquatic Resources Division Manager and the Region Managers. Unless otherwise directed by Executive Management, however, these should be prepared by the Regions and signed by the appropriate Region Manager.

For signatory authority granted to the Division Manager and Region Managers, the Commissioner and the Supervisor reserve the right to sign documents at their discretion. Also, Executive Management reserves the authority to review all proposals and draft documents at its discretion. (See discussion on what and when to send for Executive Management review.)

When the signature authority is with the Commissioner or Supervisor, final documents generated by a Region are to be forwarded by the Region Manager directly to the appropriate authority, without need for formal review or signature of the Division Manager or intervening layers of management. Final documents generated by the Division are to be forwarded by the

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Division Manager in a like manner. Because Region staff will prepare most use authorizations, Division staff will have a less active role in individual leases. Region and Division staff can and should continue to cooperate as needed. Division staff will have responsibility for preparing general policy and guidance on leasing, but Regions will have authority and responsibility for deciding on individual leases or making recommendations on individual leases directly to Executive Management.

For amendments to a lease, the signatory authority is the same person who signed the original lease. If the original lease was for more than 12 years or if for some other reason it was signed by the Commissioner, then amendments to the lease must go to the Commissioner for signature.

If a lease includes a renewal option so that the lease, including any renewals, would extend more than 12 years in total, then the lease should go to the Commissioner for signature. The purpose of this is not to eliminate the use of renewal options, nor to require that all leases fully end and be re-written every twelve years, but rather to prevent the department from being inadvertently locked into a long-term contract due to repeated renewals with no ability to resolve future problems.

Region staff may arrange for and collect information on an appraisal or sale of valuable materials from aquatic lands, but the Division Manager must give final approval to the appraisal or sale.

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## The Role of Executive Management

In general, the responsibilities of Executive Management regarding use authorizations are to:

- Set or give guidance on the standards for making decisions
- Provide land managers with the tools they need
- Review a land manager's recommendation
- Make a final decision

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■ Communicate the final decision to the land manager

**Set or give guidance on the standards for making decisions**

The standards for making decisions on use authorizations are based on the state Constitution, applicable statutes and rules, and the department's 10-year direction and vision for aquatic resources. These standards are set by the Legislature, the Board of Natural Resources or Executive Management, as appropriate, and are explained and discussed throughout this manual.

If any staff disagree with this manual on factual or policy grounds, or have a suggestion for improvement, they should describe the issue in writing to the Division. Until a change is approved by Executive Management, however, the guidance in this manual applies.

**Provide land managers with the tools they need**

Executive Management is responsible for making available the tools staff need to investigate and analyze use authorization applications. These tools include guidance and direction such as this manual, leadership on major issues, final budget determinations, direction to develop information sources, development of environmental compliance and business support divisions to provide various services, and the setting of general and specific priorities. Such tools will inevitably be limited by budget and other constraints, but the department must constantly strive to improve them. It is the staff's responsibility to use these tools well, and to make recommendations on how to improve them.

**Review a land manager's recommendation**

When a recommendation is prepared by a land manager and Region Manager, it will go to Executive Management for review. The review process has been simplified, in that the recommendation is forwarded directly to the final signatory authority without review by the Division or intervening levels of Executive Management. This should ease the process, but also increases the responsibility of the land manager and Region Manager for the quality of the recommendation delivered.

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The final decision-maker will be interested not only in what the initial decision is, but also why it was made. The staff report and recommendation should provide enough information that the decision-maker can make the best informed decision. This communication with Executive Management is described in more detail below.

**Make a final decision**

The final decision-maker may be the Commissioner of Public Lands, the Supervisor or the Region Manager, as described in Delegation of Authority above.

The signatory authority will make the final decision based on the same standards as described for the initial decision. If all considerations have been properly addressed, the initial decision and final decision should commonly be the same. On occasion, however, a final decision may differ from the initial decision for a variety of reasons. A land manager's success should be judged by the quality of the recommendation in analyzing the proposal and promoting the public benefits of state-owned aquatic lands as outlined in this manual, and not solely on whether the recommendation is ultimately followed.

All proposals must receive final approval from the appropriate signatory authority before a formal or informal offer is presented to the proponent. When staff discuss leases with applicants, they should make it clear that the decision by the department is not final until the final decision-maker has approved it.

All lease documents must be signed by the department before they are presented to the applicant for signature. If extensive negotiation with the proponent will be needed, a counter-proposal or general negotiating position of the department must be approved by the final signatory authority before an offer is presented to the applicant for consideration. This may require presenting the recommended counter-proposal or negotiating position for preliminary approval from Executive Management before conducting negotiations toward a final agreement.

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## **Communicate the final decision to the land manager**

Once a final decision has been made, Executive Management is responsible for clearly and promptly communicating that decision, with a brief explanation, to the land manager who will in turn document it and communicate it to the applicant.

If Executive Management decides to not follow staff recommendations, then the reason for this should also be carefully explained for purposes of future applicant appeals and for better informing land managers on future recommendations.

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## **Communicating with Executive Management and the Division**

Region staff, through Region management, will need to inform Executive Management about a proposed use authorization at the time that an initial decision is recommended to them. Often, however, Executive Management should be informed much earlier than this, and may need to be informed about leases even when the Region Manager is the final signatory authority.

The following situations should be brought to the attention of Executive Management and also to the Division so it may consider appropriate new policies and guidance:

- When there is no applicable statute, policy, or guidance on the issue.
- When the proposed use or site conditions would set a precedent, such as when the use has never before been done on state-owned aquatic lands or when a new commercial use has no precedent for valuation.
- When the request is for a pilot or demonstration project.

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In addition, proposals should be raised early to the attention of Executive Management when:

- The proposal involves current or likely litigation.
- The proposal would cause high environmental risk.
- The proposed use is associated with a high risk outfall .
- The proposal would have high cultural or historic sensitivity; for example, a site which is listed on the state or national historic register.
- The proposal would raise concerns among affected tribes.
- There is, or there is potential for, significant conflict with other agencies or local governments.
- There has been, or there is potential for, significant public controversy.
- There is executive or legislative involvement from other jurisdictions.

Given such information, Executive Management may wish to be directly involved in the negotiations or evaluation of a particular proposal, or may assign Division staff to do so.

## **What to include for executive management review**

The final decision-maker and signatory authority will want to ensure that this is the most prudent decision that could be made to provide for the best interests of the public. Staff should ask themselves what they would want to know in order to assure that a prudent decision is made, considering the many complexities and alternatives that may exist.

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In general, the recommendation for an initial decision or the early notification that is provided to Executive Management should include the following types of information:

- The condition of the state-owned aquatic lands in question, and of neighboring or otherwise affected lands.
- The name of the proponent, and any pertinent information about who they are.
- The nature of the project, use, structure or activity to be undertaken on state-owned aquatic lands.
- The value or advantages that the state-owned aquatic lands may provide to the proponent, project, use, structure or activity.
- The relationship of the proposal to the department's statutory responsibilities and policy goals, including to the desired provision of public benefits. This should specifically refer to the relevant statutes, rules, and policies.
- The relationship of the proposal to other existing or potential future uses of state-owned aquatic lands.
- Significant natural resource or ecological impacts, including cumulative impacts from this and related existing or future proposals, and considering the impacts from growth and development that may be triggered by the proposal.
- Steps taken to mitigate adverse environmental impacts.
- The nature and status of any public issues or controversy, involvement by public officials, or related litigation.
- Steps taken to address financial and environmental risks.
- Any unresolved legal and/or policy questions.

- The amount and basis of the recommended valuation and rent, if the proposal is recommended for approval. This should especially include any precedents in the department's recent practice and any comparables from other jurisdictions or other landowners.
- Alternatives that have been considered, the pros and cons of each, and the rationale for choosing the recommended decision rather than the other alternatives.
- The fundamental rationale for why the initial decision may be in the best interests of the public.

Information given to Executive Management should discuss the issues and assumptions behind the conclusions, not merely the conclusions themselves. In general, staff must provide sufficient explanation so that the final decision-maker can evaluate, not merely read, the proposed alternatives and recommendation.

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## The Role of the Division

In general, the responsibilities of the Aquatic Resources Division regarding use authorizations are to:

- Provide policy guidance and direction
- Provide oversight and audit the overall success of the program
- Coordinate and conduct negotiations on selected major projects
- Review authorizations with unresolved policy questions or which would set precedents

### Provide policy guidance and direction

The Division is the primary source for policy guidance and direction on use authorizations and other land management activities. For example, this manual is to be maintained and updated continuously by the Division. Division policy staff will be responsible for identifying new issues and policy concerns,



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gathering ideas to address these issues and concerns, and preparing proposals for Executive Management. All staff should direct ideas and suggestions for policies to Division policy staff. Executive Management remains the final decision-maker regarding policies and direction. The Division is also responsible for communicating approved policies and direction to land managers and other staff.

The Division has responsibility for updating model contracts and other use authorization templates as needed to better achieve department goals. Region staff should continue to use current templates in the best possible manner, and not delay applications while waiting for future template updates. Region staff should also forward suggestions on templates to the Division.

Not every question from a land manager regarding use authorizations should be directed to the Division. Land managers should initially direct questions to their own supervisors. If a question cannot be answered through a review of relevant statutes, regulations, this manual, and other guidance materials, or by reasonable application of the principles therein, then it can be directed to the Division. Region and Division Managers should develop a preferred means of communicating these questions and answers.

### **Provide oversight and audit the overall success of the program**

The Division will develop a reporting system to routinely identify emerging trends and issues in aquatic land management. Division staff can then prepare policy and guidance on these issues, as appropriate. Also, the Division will develop auditing and monitoring systems to catch problems within the program. For example, if a backlog of lease applications is growing, the Division should work to identify why and determine what must be done to eliminate it. Finally, the auditing should assure that department policies and direction are understood and are being followed by all staff.

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The Division's auditing and monitoring functions are intended to address the success of the program as a whole in meeting the department's statutory obligations, not the success of specific individuals nor of contract processing activities. Audit functions regarding personnel or business issues may be provided by other Divisions, as appropriate.

### **Coordinate and conduct negotiations on selected major projects**

The Division may coordinate projects which involve a lot of staff and many related decisions, such as the collaborative Commencement Bay efforts, Bellingham Bay planning efforts, or multi-region linear projects. Region staff will continue to be involved in most of these projects, but a Division staff person may be assigned as project manager. Regions will conduct most rent negotiations, with training and valuation information from the Division. The Division may be assigned to negotiate rents and related agreements for some complicated and high value leases, such as for the Edgewater Hotel and Cherry Point leases.

The precise division of responsibilities for specific projects will be determined on a case-by-case basis by Division and Region Managers, with direction from Executive Management. Region land managers are presumed to be responsible for all leases and other direct land management activities until an explicit decision is made to assign responsibility elsewhere.

### **Review authorizations with unresolved policy questions or which would set precedents**

The Division should be more involved in use authorization applications when the decision on the application requires a larger policy decision or would set a precedent that amounts to a new policy decision. When no specific policy or direction exists to guide a decision on a proposed use, and staff cannot reach a clear decision by applying the general principles of aquatic land management as described in law and policy, then the Division should, relatively quickly, develop and provide interim guidance.

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In general, the interim guidance should be cautious, keep options open, and err on the side of protecting the resources. It should avoid long-term commitments and irrevokable impacts. All use authorizations involving interim guidance must go to the Commissioner for final signature. The recommendation to the Commissioner should include a discussion of the interim guidance and of the precedent-setting nature of a proposal.

While the Division determines the interim guidance to apply to a proposed use, the Region staff and Region Manager remain responsible for the recommendation on the use itself.

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## The Role of the Region Manager

Region Managers have significant authority and responsibility for use authorization decisions. For use authorizations with a term of 12 or fewer years and for waterway permits, the Region Manager is the final signatory authority. For all other use authorizations and for other aquatic land management decisions, the Region Manager will review and forward proposals to the Commissioner or Supervisor for final approval. (See the discussion on Delegation of Authority above.)

Final lease documents generated by a Region are either to be signed by the Region Manager or forwarded by the Region Manager directly to the appropriate signatory authority, without need for formal review or signature of the Division Manager or intervening layers of management. Division staff should be directly involved only if there are policy questions that need resolution or if the authorization would set a precedent.

Region Managers, therefore, will bear some of the responsibilities of both land managers and Executive Management. For leases forwarded to Executive Management for signature, Region Managers, like land managers, should be knowledgeable enough to explain the reasons for, and be willing to advocate for, the recommendation. For leases that may be signed by Region Managers, the Region Managers must review

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recommendations from the land managers and must take responsibility for ensuring that the final decision best meets the department's statutory obligations and goals.

Region Managers will also need to arrange with the Division Manager on how best to communicate Region needs and questions to the Division, and how to divide responsibility for major projects in which Division staff may be directly involved.

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## The Role of the Land Manager

In this section, the term “land manager” is used broadly to mean all staff who participate in management of state-owned aquatic lands and who may receive, analyze, and recommend for or against proposed use authorizations. Most often, this will be Region aquatic staff, both line staff and supervisors, but this section applies equally to any department staff who may be in this position.

The general responsibilities of the land manager regarding use authorizations are to:

- Know the standards for making decisions.
- Know the aquatic lands affected.
- Investigate and analyze proposed uses.
- Inform Executive Management or the Division, as needed.
- Work with the Aquatic Resources Division, Environmental Quality and Compliance Division, Engineering Division, and Business System Support Division contract and scientific support groups, as appropriate.
- Work with other agencies, as appropriate.
- Make suggestions for improving proposals.

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- Make the initial decision on a proposal.
  - Recommend and defend decisions to the final decision-maker.
  - Document the final decision and communicate it to the applicant and any other appropriate parties.

### **Know the standards for making decisions**

The standards for making decisions on use authorizations, as described in this manual, are based on the state Constitution, applicable statutes and rules, policies passed by the Board of Natural Resources, and the department's 10-year direction and vision for aquatic resources. In particular, the department is responsible for ensuring environmental protection and providing for the other public benefits described in RCW 79.90.455 and other statutes.

Land managers are expected to thoroughly understand these statutes and rules and this manual. When questions arise, land managers should contact their supervisors. If a policy or interpretation question cannot be resolved, questions should be directed to the Division in a manner determined by the Region and Division Managers.

If any staff disagree with this manual on factual or policy grounds, or have suggestions for improvement, they should describe the issue in written detail to the Division. Until a change is approved by Executive Management, however, the guidance in this manual applies.

### **Know the aquatic lands affected**

In addition to knowing the standards for use authorizations, land managers should know the conditions of the state-owned aquatic lands in question, to the best of their ability and with all available information. Land managers should be aware of the conditions of surrounding aquatic lands and adjacent uplands.

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The Division will work to provide better information on the condition of aquatic lands throughout the state, but land managers will likely need to seek additional information on specific sites separately. In particular, a site visit may provide highly valuable information that cannot be gained any other way.

### **Investigate and analyze proposed uses**

When a proposal for use of aquatic lands is received, the land manager must actively investigate and analyze the proposed use. It is not sufficient to rely on the applicant's characterization.

Staff should not hesitate to require additional information from the applicant. Any expense required for collecting this information beyond the routine staff time necessary to review the application is the responsibility of the applicant. At the same time, the land manager is responsible for judging the completeness and accuracy of the information. If information necessary to make a decision is not available, or if the applicant is unwilling to bear the expense of collecting necessary information, staff should notify the applicant that consideration of the proposal has been postponed until the information is available.

If at all possible, conduct a site visit. A site visit will usually give a far better understanding of the issues facing both the applicant and the department. If the site visit requires staff to cross private property not open to the public, they must obtain the permission of the property owner.

After gathering the information, the land manager is responsible for completing a thorough analysis of the proposal. This analysis may draw heavily on the analysis and description required of the applicant, but should not depend solely upon it.

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## **Inform executive management or division, as needed**

The earlier section on communication with Executive Management describes when and how staff are expected to inform Executive Management regarding applications for use authorizations. Processes for informing immediate supervisors and Region Managers are to be determined within each Region.

## **Work with other agencies, as appropriate**

Many other governmental entities have some involvement in nearly all of the projects proposed or existing on state-owned aquatic lands. These agencies have important roles to play; the department will coordinate with federal, state and local environmental regulatory agencies with regard to their requirements. Staff should also coordinate with other agencies as appropriate for salmon habitat restoration, watershed planning, and similar environmental protection efforts.

None of these agencies, however, is responsible for comprehensive management of state-owned aquatic lands or for protecting the proprietary interests of the public as owners of these lands. In some cases, consideration of proprietary interests may lead to a different conclusion about the project than does a purely regulatory or service-delivery perspective. Department staff must be diligent in carrying out the department's unique responsibilities for these public lands and resources.

## **Make suggestions for improving proposals**

The department must not be limited to the proposal made by an applicant for use of state-owned aquatic lands. Instead, staff should seek ways to improve proposals and achieve the use of state-owned aquatic lands that provides for the best interests of the public. Failure to consider alternative proposals and uses will weigh heavily against approval of an application.

Staff should be involved with proposals at the earliest possible time, even before a formal use authorization application is received. When possible, this includes participating in land use planning and the preliminary design of projects.

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Staff should notify applicants of what uses are likely not to be authorized, and which alterations of a proposal would make it most likely to be approved, bearing in mind that land managers cannot make the final decisions. Staff should forward the best possible alternative to the final decision-maker, not merely whatever project the applicant proposes. This includes, when circumstances dictate, recommending an entirely different use as a preferred alternative to the applicant's proposed use. In these cases, staff should indicate how the alternative would provide for better management of state-owned aquatic lands.

## **Make the initial decision on a proposal**

After investigating, analyzing, and considering alternatives to a proposal for use of state-owned aquatic lands, the land manager must make an initial decision on whether it appears to advance or hinder the department's goals, and make a recommendation on whether to approve or deny it. This recommendation will then go to the Region Manager, Supervisor or Commissioner as appropriate to make the final decision.

This initial decision is a distillation of all the analysis and considerations described throughout this manual. It is the most important part of a land manager's job. It is also the occasion when staff are to apply their best professional judgement and have their best opportunity to provide for good stewardship of the lands under the department's care.

It is not the responsibility of the land manager to find a way to approve (or even improve) all applications. It is the responsibility of the land manager to make an informed, thoughtful recommendation for or against approval of each application based on whether the proposal advances or hinders the department's statutory goals and aquatic vision. Success for the department does not require approving all proposals. Instead, the department will be successful if staff recommend in favor of proposals which most benefit the public, and against proposals which do not.

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If the recommendation is to approve an application, staff may include conditions which must be met for the use to be authorized. For example, staff should consider what would be the ideal outcome for the public and what outcomes should absolutely not be accepted, and design the conditions accordingly.

In fact, staff must include whatever conditions are necessary to best provide for the public benefits of state-owned aquatic lands. While any given single lease may not realistically provide for every kind of public benefit, staff should search for ways within each lease to ensure environmental protection, encourage direct public use and access, foster water-dependent uses, utilize renewable resources, generate revenue in a manner consistent with these other public benefits, and provide for navigation and commerce. To meet the department's statutory responsibilities regarding state-owned aquatic lands, staff should require applicants to take all feasible steps to provide for these benefits.

### **Recommend and defend decisions to the final decision-maker**

After the analysis is complete and the land manager has made a recommendation to either approve or deny the use authorization application, the land manager must write a brief staff report that clearly explains the reasons for the recommendation and cites the factors considered in making it. If the recommendation is to approve the proposed use, the report should also list and fully explain each of the conditions that will be placed on the contract. The recommendation should then be forwarded to the Region Manager. If appropriate, the Region Manager may forward it to the Supervisor or Commissioner (as described in Delegation of Authority above).

If the lease is especially complicated or controversial, or if extensive negotiation with the applicant will be needed, it may be appropriate to send a preliminary recommendation to the Region Manager, Supervisor or Commissioner before staff prepares a final lease document. This can be sent by the same procedure as for final recommendations. Staff should describe

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the issues that must be resolved in order to properly negotiate or prepare the lease document, and recommend how to resolve them. Otherwise, if the lease is relatively uncomplicated, then a copy of the proposed lease can accompany the initial recommendation.

All lease documents must be signed by the department before they are presented to the applicant for signature. Likewise, in instances of extensive negotiation, a counter-proposal or general negotiating position of the department must be approved by the final signatory authority before a formal offer is presented to the applicant for consideration.

The land manager should be able to explain the reasons for, and also be willing to advocate for, the recommendation presented to the final decision-maker. If staff are uncomfortable making the recommendation or arguing on its behalf, then it may need to be reconsidered.

### **Document the final decision and communicate it to the applicant**

Once an application is approved or denied, the department must document the final decision and the reasons why it was made, with reference to the department's statutes, regulations and policies. The record that the department makes concerning the underlying reason for its final decision is extremely important. It may be used in a future legal proceeding, including if the applicant appeals the decision. Future lease managers may need this documentation in order to understand the lease history. Ideally, this explanation should be consolidated into one concise document that can be easily read. This document must be made at the time the decision is made. This applies equally to final decisions made by Region Managers and Executive Management.

Finally, the land manager must communicate the decision on the proposal to the applicant. If approved and signed, the use authorization should now be ready for the applicant's signature. (Note that the department authority must sign the document

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before it is offered to the applicant for signature.) If a preliminary recommendation was approved, staff can now negotiate or prepare the final lease document. If disapproved, the applicant should receive a brief explanation as to the reasons why, with reference to the department's statutes, regulations, and policies and the specifics of the application.